TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 627.

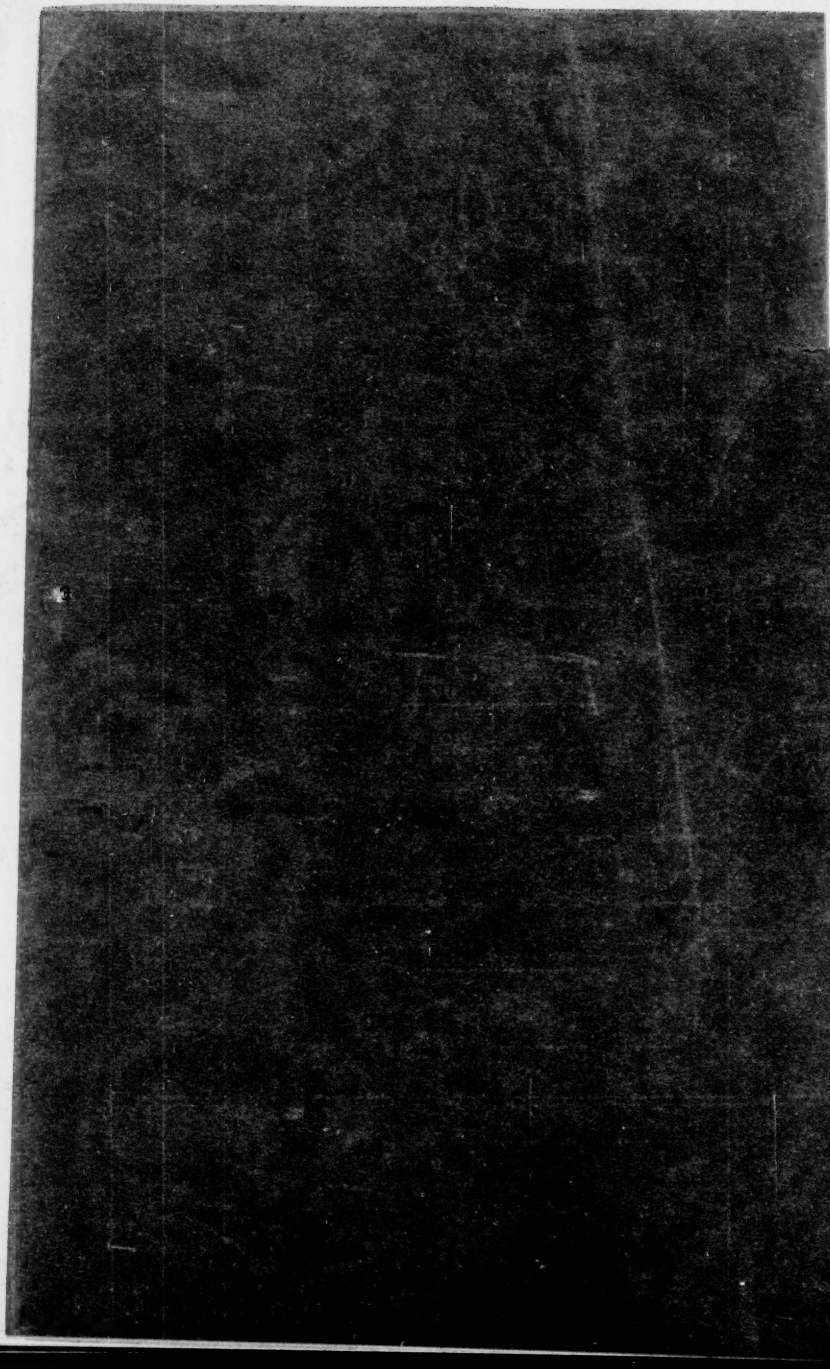
THE UNITED STATES, APPELLANTS,

vs.

THE STEAM FERRY-BOAT "NUESTRA SENORA DE REGLA," HER TACKLE, ETC., THE COMPAGNIA DEL FERRO-CARREL DE LA BAHIA DE LA HABANA A MATANZAS, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 7, 1872.



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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

THE UNITED STATES OF AMERICA, LIBELLANTS and appellants,
vs.
THE STEAM FERRY-BOAT "NUESTRA SENORA de Regla," her tackle, &c., The Compagnia del Ferro-Carrel de la Bahia de la Habana á Matanzas, claimant and appellee.
} In prize. 17—187.

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate, are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the said United States, the ninety-sixth.

{SEAL.} GEO. F. BETTS, *Clerk.*

NOAH DAVIS,
U. S. District Attorney
For Libellants & Appellants.
BEEBE, DONOHUE & COOKE,
For Claimant & Appellee.
CHARLES DONOHUE,
Advocate.

2 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the 28th day of October, in the year of our Lord one thousand eight hundred and seventy-one—

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES OF AMERICA
vs.
THE STEAMER NUESTRA SENORA DE REGLA, her engine, tackle, apparel, & furniture.
} In prize. 17—187.

1862. JUNE 9TH. The libellants file their libel (in prize) against The Steamer Nuestra Senora de Regla, her engines, tackle, apparel, and furniture, in the words and figures following, to wit:

3 United States district court, southern district of New York.

THE UNITED STATES OF AMERICA
against
THE STEAMER NUESTRA SENORA DE REGLA, tackle, &c.
} In prize.

To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel of information, in prize, filed herein by E. Delafield Smith, attorney of the United States for the southern district of New York,

on behalf of said libellants, and of the naval captors in interest, respectfully represents to this honorable court—

First. That the steamer or vessel called the Nuestra Senora de Regla, with the goods, wares, and merchandise laden therein, was captured as lawful prize on or about the day of December, 1861, and at or near Port Royal, South Carolina, by General Sherman, U. S. A., commanding in that department; and was, on or about the 29th day of January, 1862, turned over to flag-officer S. F. DuPont, of the
4 United States Navy, commanding at that station.

Second. That the steamer or vessel, called the Nuestra Senora de Regla, with the goods, wares, and merchandise laden therein, were at the time of such capture, and are now rightfully subject to such capture, and were and are lawful prize, and as such should be condemned and forfeited to the use of the libellants.

Third. That the said steamer or vessel, called the Nuestra Senora de Regla, with the goods, wares, and merchandise laden therein, have been brought to the port of New York, and are now at said port, and within the jurisdiction of this honorable court.

Fourth. That, by reason of the premises, the said steamer or vessel, called the Nuestra Senora de Regla, her tackle, apparel, and furniture, with the goods, wares, and merchandise laden therein, became and are liable to condemnation and forfeiture as lawful prize and should be condemned and forfeited as lawful prize to the libellants.

That, all and singular, the premises are and were true, and
5 within the jurisdiction of this honorable court. In attestation whereof the said attorney exhibits the said vessel's papers, and the documents, &c., found on board, together with the testimony of the witnesses, duly taken, in preparatorio, by the prize commissioners, appointed by this honorable court, which are or will be filed in the registry of this court. Wherefore the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said steamer or vessel, called the Nuestra Senora de Regla and her tackle, apparel, and furniture, and the goods, wares, and merchandise laden therein, in this behalf to be made; and that all persons, interested in the said vessel and her cargo, may be cited to answer in the premises; and that, all due proceedings being had therein, this honorable court may be pleased to decree for the condemnation and forfeiture aforesaid, and that the said steamer, her tackle, apparel, and furniture, with the goods, wares, and merchandise laden therein, may be condemned as lawful prize to the use of the said United States.

Dated New York, June 9th, 1862.

E. DELAFIELD SMITH,
U. S. District Attorney.
By S. L. W., *Ass't.*

6 (Indorsed:) In prize. U. S. district court. The United States vs. Steamer Nuestra Senora de Regla, tackle, &c. Libel. E. Delafield Smith, U. S. district att'y. Filed June 9, 1862.

7 SOUTHERN DISTRICT OF NEW YORK, *ss:*

[SEAL.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the ninth day of June,

in the year of our Lord one thousand eight hundred and sixty-two, by E. Delafield Smith, esquire, U. S. district attorney, on behalf of the United States of America, against The Steamer Nuestra Senora de Regla, her tackle, &c., and cargo, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer, her tackle, &c., and cargo, may be cited in general and special, to answer the premises, and, all proceedings being had, that the said steamer, her tackle, &c., and cargo, may, for the causes in
8 the said libel mentioned, be condemned as lawful prize to the use of the United States:

You are, therefore, hereby commanded to attach the said steamer, her tackle, &c., and cargo, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel that they be and appear before the said court, to be held in and for the southern district of New York, on the first day of July next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this ninth day of June, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty sixth.

GEO. F. BETTS, *Clerk.*

E. DELAFIELD SMITH,
U. S. District Attorney.

9 (Indorsed:)

In obedience to the within monition I attached the st'm'r Nuestra Senora de Regla & cargo therein described, on the 9 day of June, 1862, and have given due notice to all persons claiming the same that this court will, on the 1st day of July inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof should no claim be interposed for the same.

ROB'T MURRAY,
U. S. Marshal.

Dated 1 July, 1862.

In prize. Vol. 17, page 187. Southern district of New York. United States district court. The United States vs. The Steamer Nuestra Senora de Regla & cargo. Monition ret'ble, 1st July, 1862. E. Delafield Smith, U. S. attorney. Filed 1st day of July, 1862.

10 To the Honorable Samuel B. Betts, judge of the district court of the United States for the southern district of New York:

The claim of the Comp'a del Ferro-Carrel de la Bahia de la Habana a Matanzas, claiming the steamer called the N'tra S'ra da Règla, arrested at the suit of the United States as prize, respectfully shows:

First. The claimants are a corporation created by the law of Spain,

and carrying on business at Havana, in the Island of Cuba, and they are subjects of the Queen of Spain.

Second. That these claimants are the true and only owners of the said steamboat, and the whole of her, and were so at the time of the seizure of her engine, tackle, apparel, and fu'nitu'e, and every part thereof, and entitled to a return thereof to them, with damages for the detention and injury thereof.

Third. That claimant denies all the statements of the libel except that the said vessel was seized, on about the first of December, 1862, in consequence of a refusal to sell.

Fourth. That claimants allege that those on board of said ves-
11 sel at the time of such seizure were detached from her, and the vessel detained until about the first of April, before being sent here for an adjudication.

Fifth. That all and singular the premises are true and within the jurisdiction of this court.

Wherefore the claimant prays that said vessel may be delivered to them, with costs & damages for her detention.

The Comp' de la Ferro-Carrel de la Bahia de la Habana, a Ma*laga*
HORATIO A. REYNAL.

Sworn to before me this 9th day of July, 1862.
O. R. STEELE, *Notary Public.*

BEEBE, DEAN, DONOHUE,
For Def't, Client.

12 UNITED STATES OF AMERICA,
Southern Distr'ct of New York:

Ignatius B. Reynolds, being duly sworn*ed*, says that he is a master mariner, and resident & inhabitant of the Island of Cuba, & is subject of the Queen of Spain, and master of the steamer named in the foregoing claim. That the said steamer was, at & before the alleged capture, the sole and exclusive property of the claimants named in the foregoing claim, no other person or persons; that said vessel has always since continued to be their property; and if discharged herein said claimants will be entitled to the possession thereof, exclusive of all other person or persons; that said claimants are a Spanish corporation, doing business at Havana, in the Island of Cuba; and said vessel is Spanish property, & was seized on her voyage from New York to Havana. And deponent further says that the said vessel was built for account of the claimants, and by contract with them in New York City,
& delivered to them, deponent being their agent, prior to the
13 month of October last; that when finished, deponent, as master, proceeded with said vessel for Cuba; but, in consequence of stress of weather, had to put back to New York; that, being again ready for sea, said vessel started, without cargo, for Havana aforesaid, being intended to run as a ferry-boat in the harbor of Havana; that, in consequence of stress of weather, said vessel was driven out & over Ocrocoke bar, & remained on and inside the bar from necessity for about twenty-four hours, and again started on her intended voyage to Cuba afterward; but, in consequence of continued bad weather and breaking of machinery, it became necessary to send to Georgetown to obtain repairs, and a boat was put ashore for that purpose; that, while lying off said port, she was seized by the confederate troops and tak*ing* to Georgetown, and her captain, deponent, imprisoned, until the Spanish consul procured his release; that, as soon as possible, repairs

were made and the vessel started on her original voyage; and,
14 wanting coal, proceeded to the Susquehanna, the U. S. steamer off Charleston; reported to her, and requested permission to go into Port Royal; that the flag-officer put some prisoners taken by the U. S. on board and requested the master to take them to Port Royal, and gave him permission to go in there; that the vessel having taken the said prisoners, proceeded to Port Royal and reported to the officer in charge and delivered up the prisoners, and was then supplied with coal; that, after being supplied, the quartermaster applied to deponent to sell the vessel, and offered a bonus to him to do so, and, on deponent refusing, he was informed that the vessel was seized as prize; that then the vessel was chartered by the United States, (deponent having no option,) and retained until the last of March, when, after having been badly damaged & injured by her use, she was sent to New York as prize, the deponent having been compelled in the mean time to
15 leave by reason of his sickness; that said vessel never violated or attempted to violate any blockades.

IGNACIO B. REYNOLDS.

Sworn to before me the 9th day of July, 1862.

O. R. STEELE,
Notary Public.

16 (Indorsed:) 17—187. In prize. U. S. dist. court. The Steamer N'tra S'a da Regla, &c., ag'st The United States. Claim & test oath. Beebe, Dean & Donohue, for client. Filed 9th July, 1862.

17 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the twentieth day of June, in the year of our Lord one thousand eight hundred and sixty-three.

Present, the Honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE STEAMER NUESTRA SENORA DE REGLA, her tackle, &c. } In prize. 17—187.

This cause having been heard on the libel, the testimony taken in preparation, and the papers found on board the captured steamer; and due deliberation having been had thereon, and it appearing to the court that the evidence herein discloses no sufficient ground for a decree of condemnation of the captured property:

Now, on motion of Messrs. Beebe, Dean & Donohue, proctors
18 for the claimants herein, it is ordered, adjudged, and decreed that the steamer "Nuestra Senora de Regla," her tackle, &c., be restored to the claimants.

And it is further ordered that the question of costs of this adjudication, and of damages resulting from the capture be reserved for future hearing and determination.

SAM'L R. BETTS.

19 (Indorsed:) In prize. Vol. 17, No. 187. U. S. district court for the southern district of New York. The United States vs. The Steamer "Nuestra Senora de Regla," her tackle, &c. E. Delafield

Smith, U. S. district attorney. Final decree of restitution of vessel. Question of costs and damages reserved. Filed the twentieth day of June, 1863.

20 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-three—

Present, the Honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE STEAMER NUESTRA SENORA DE REGLA, &C.

It having been mutually agreed between the counsel for the respective parties that the said vessel in the above decision was immediately taken into the possession and use of the United States under a charter-party, and delivered them thereunder, and so remained without molestation from the claimants, on motion of the counsel for the vessel, and with the assent of the United States attorney, it is ordered by the
21 court that further proceedings and litigation be stayed in the above cause to the end that all questions of damages reserved in the decisions of the court in the term of June last may be considered and adjusted by the Government of the United States, in the application and with the concurrence of the Government of Spain.

SAMUEL R. BETTS.

Approved:

E. DELAFIELD SMITH,
U. S. District Att'y.
BEEBE, DEAN & DONOHUE,
For Client.

22 (Indorsed:) 17—187. U. S. district court for the southern district of New York. The United States vs. The Steamer Nuestra Senora de Regla. Order. Beebe, Dean & Donohue, proctor' for *client* Filed the 15th day of October, 1863.

23 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the second day of June, in the year of our Lord one thousand eight hundred and seventy.

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES
vs.
THE STEAMER NUESTRA SENORA DEL REGLA her engine, tackle, &c.

On motion of William M. Evarts, esq., of counsel for the claimants of the steamer Nuestra Senora del Regla, &c., the United States district attorney for this district being present and assenting thereto:

Ordered that it be referred to George F. Betts, esq., one of the commissioners of this court, to ascertain what damages and the
24 amount thereof the claimants, owners of the steamer Nuestra

Senora del Regla, her engine, tackle, &c., have sustained, by reason of the seizure and detention of the said steamer, and report thereon to this court with all convenient speed.

SAM'L BLATCHFORD.

25 (Indorsed:) In prize. Vol. 17, No. 187. U. S. district court for the southern district of New York. The United States vs. The Steamer "Nuestra Senora del Regla," her engine, tackle, &c. Order of reference to Geo. F. Betts, U. S. com., to ascertain damages, &c. Filed June 2nd, 1870.

26 U. S. district court.

THE UNITED STATES
vs.
THE STEAMER NUESTRA SENORA DE REGLA, her tackle, &c. } In prize. 17—187.

Special reference under order made June 2d, 1870, to ascertain what damages and the amount thereof the claimants have sustained, by reason of the seizure and detention of the said steamer, and to report, &c.

Mr. Donohue for claimants.

Mr. Stanley for U. S.

1870. JUNE 6.—Claimants put in a deposition in preparation of Ignatio A. Reynals—3d answer—to show the date of seizure of the steamer, which was November 29th, 1861.

Paper marked E. H. O., No 2, referred to in that deposition: Charter between the Quartermaster's Department and Captain Reynals in December, 1861. And claimants refer generally to the provisions of that charter.

Libel in the case was first filed June 9th, 1862, and vessel then attached.

27 Final decree of restoration, dated June 20th, 1863.
Adj'd to 8th inst. 10 a. m.

JUNE 8.

Claimants call EUGENE LENTILHON, (sworn.)

I reside in the city of New York. I had nothing to do with the building of this boat. After she had sailed we paid, on November 6th, 1861, to parties who had charge of her building, the balance due for building her, by direction of the claimants, who then owned her. The boat was built as a ferry-boat to run between Havana and Regla, which is across the bay, to connect with the Matanzas Railroad. Since that time, I have represented that company in reference to that boat entirely. The company has never got back the boat, and it has never been offered to me, nor to the company, to my knowledge. Cap't Reynals arrived in New York about March 3d, 1862, after the capture of the boat, and remained here till about July 22d, 1863.

E. LENTILHON.

Sworn to before me this 8th day of June, 1870.

GEO. F. BETTS.

GILBERT G. YOUNG, (sworn.)

Ship-broker; familiar with shipping affairs. The usual and
28 ordinary charge of a person to look after and attend to the

affairs of a vessel in distress o' trouble would be ten dollars a day, and expenses paid.

GILBERT G. YOUNG.

Sworn to before me this 8th day of June, 1870.

GEO. F. BETTS, *U. S. Com'r.*

1871. FEBRUARY 11th.—Mr. Donohue appears for claimants; Henry E. Davies, jr., esq., ass't U. S. dis't att'y for Government.

Mr. Donohue puts in evidence the appraisal made in this action, John Englis, Oct. 18th, 1862, from the files of the court.

Adj'd to 18th inst., 11 a. m.

FEBRUARY 18.—Mr. Davies, assis't dis't attorney, offers in evidence the appraisal of the Nuestra Senora de Regla, by B. F. Delano, naval constructor, and Benj. F. Garvin, chief engineer U. S. Navy, pursuant to an order of U. S. dis't court, made Aug't 22d, 1862, bearing date August 25, 1862, and on file in this case. Filed August 29, 1862.

(Objected to by Mr. Donohue.)

Evidence closed. Adjourned to 25th instant at 11 a. m. to submit arguments at that time.

29 (Indorsed:) V. 17, 187. In prize. The United States vs. The Steamer Nostra Senora de Regla, &c. Minutes on reference.

30 District court of the United States for the southern district of New York.

Deposition of Ignatio A. Reynals, (master,) a witness produced, sworn, and examined in preparatorio, on the twenty-sixth day of May, in the year eighteen hundred and sixty-two, at the office of E. H. Owen, U. S. prize commissioner, New York, on the standing interrogatories established by the district court of the United States for the southern district of New York, the said witness having been produced for the purpose of such examination by E. Delafield Smith, U. S. dis't attorney, of said district, in behalf of the captors of a certain ship or vessel called the "Nuestra Senora de Regla."

To the 3rd interrogatory he says: The vessel was seized on the 29th November, 1861, in Port Royal. She was afterwards sent from Port Royal to this port. No reason or pretence was given for such seizure.

31 (Indorsed:) U. S. district court. The United States vs. The Steam Ferry-boat Nuestra Senora de Regla. Deposition taken in preparatorio.

32 *Paper marked E. H. O., and referred to in the deposition of Capt. Reynals.*

Articles of agreement made this day of December, 1861, between captain of the steam ferry-boat "Nuestra Senora de Regla," for and on behalf of the owners of the said ferry-boat of the first part, and Captain Rufus Saxton, an assistant quartermaster in the United States Army, for and on behalf of the United States of America of the second part, witnesseth:

That the said party of the first part, for and in consideration of the

payment hereinafter promised to be well and truly made by the said party of the second part, hath chartered to the United States the steam ferry-boat "Nuestra Senora de Regla," with all her tackle, apparel, furniture and machinery, to be used for transporting troops, stores, or other things, as the said party of the second part may direct.

And the said party of the second part doth agree, for and in consideration of the faithful performance of the above duty, that the said party of the first part shall receive the sum of two hundred dollars for each and every day the said boat may be kept in service, said steam ferry-boat to be kept staunch, sound, and strong, and her machinery in good running order and condition by the said party of the first part.

It is understood by the parties to this agreement that, in case the said steam ferry-boat shall be confiscated to the United States, then this contract shall be void; otherwise to remain in full force and virtue.

33 It is furthermore understood by the parties to this agreement that the said steam ferry-boat is not to be run outside of the bar of Port Royal, but at any and all points on the rivers and creeks that connect with Broad River.

This contract to commence on the 16th day of December, 1861, and continue in force ten days, after which each party has a right to cancel the same.

In witness whereof the undersigned have hereunto affixed their hands and seals at Hilton Head, S. C., the day and date first above written.

(S'd) YGNACIO A. REYNALS. [L. S.]
(S'd) R. SAXTON, [L. S.]
Capt. U. S. Army, Chief Quartermaster, E. C.

Witnesses—
JOHN W. GREEN.
THO'S TANNATT.
JNO. H. MOORE.

I certify the foregoing paper-writing to be a true copy of the original charter-party attached to the depositions in preparatorio in the suit of The United States vs. The Steam Ferry-boat "Nuestra Senora de Regla," and which original charter-party has been taken from the files in said case, & this certified copy thereof substituted, by order of court, made & entered January 20th, 1869.

(S'd) GEO. F. BETTS, *Clerk.*

34 *Extract from 12th interrogatory of Ignatio A. Reynals' deposition in preparatorio.*

"I took my papers and went and presented myself to Commodore Dupont. He examined my papers. I stated my misfortunes, and that I was in need of assistance. He told me to make a list of everything I needed, & he would assist me so that I could proceed. I made a list, & he assisted me by furnishing coal. I told him I had a letter & seven prisoners, which I delivered; this was on the 26th. On the 27th November I commenced to take coal, & on 28th took coal & stores. On the 29th, the weather being bad, commenced to drag. We were then taken by a Gov't boat down to Hilton Head, close to the beach. The next thing was the vessel was captured. While we lay there the quartermaster of the U. S. forces came & wanted to purchase the vessel. I refused to sell, as I had no authority, & the next day we were seized. The vessel was detained, and about the 11th December they wanted to charter the boat and I signed a charter-party, which I now produce, &

it is marked 'E. H. O.' They agreed with the engineers, & fitted her with rations, and went around in a river near Tybee Island—carried munitions of war. They kept her in use under the charter 32 or 33 days, and then the Navy Department took charge of her and continued her in its service; afterwards she was sent here to New York."

35 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the 20th day of January, in the year of our Lord one thousand eight hundred and sixty-nine—

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES
vs.
THE STEAM FERRY-BOAT NUESTRA SENORA de Regla, her tackle, &c. } In prize. 17—187.

On motion of Mr. Donohue, one of the proctors for the claimants in the above-entitled action, it is ordered that the original charter-party attached to the depositions in preparatorio in this cause, be withdrawn from the files, and that a true copy, certified by the clerk of this court, be substituted in lieu thereof.

SAM'L BLATCHFORD.

36 (Indorsed:) In prize. Vol. 17, No. 187. United States district court for the southern district of New York. The United States vs. The Steam Ferry-boat Nuestra Senora de Regla, &c. Order. , proctor for . Filed the 20th day of January, 1869.

37 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the 22 day of August, in the year of our Lord one thousand eight hundred and sixty-two.

Present, the Honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE STEAMER NUESTRA SENORA DE REGLA, &c. } In prize. 17—187.

On reading and filing a notice of motion and a verified copy of a letter from the Secretary of the Navy, stating that the Navy Department desires to obtain possession of the steamer Nuestra Senora de Regla, and on hearing Mr. E. Delafield Smith, United States district attorney, in support of the motion, and Mr. W. R. Beebe, proctor for the claimants, in opposition thereto, it is hereby ordered that the said steamer Nuestra Senora de Regla, be appraised by Benjamin F. Delano, United States naval constructor, and Benjamin F. Garvin, chief engineer, both now stationed at the navy-yard, New York, and John Englis. That such appraisement be filed with all convenient speed with the clerk of this court. That thereafter said steamer be delivered to the Navy Department for the use of the Government, upon filing in court a certificate of the assistant treasurer of the United States in New York, that the amount of the appraisement has been deposited in the United States

Treasury, subject to the order and disposal of the court on final decree in the case.

(Signed) SAM'L R. BETTS.

38 (Indorsed:) In prize. Vol. 17, No. 187. United States district court for the southern district of New York. The United States vs. The Steamer Nuestra Senora de Regla, &c., &c. Order. Appointment of appraisers. E. Delafield Smith, U. S. dist. att'y. Filed the 22nd day of August, 1862.

39 United States district court for the southern district of New York.

THE UNITED STATES
vs.
THE STEAMER NUESTRA SENORA DE REGLA, &c., &c.

In the above case, in obedience to an order of this court, under date of the 22d inst., the subscribers were appointed to examine and appraise the above-named vessel for the use of the Government, and in compliance with the said order the subscribers have examined the said vessel, and do appraise her as worth for the use of the Navy Department the sum of twenty-eight thousand dollars.

B. F. DELANO, *N. C.*
BENJ. F. GARVIN,
Chief Eng'r, U. S. N.

NAVY-YARD, NEW YORK, *August* 25, 1862.

(Endorsed:) 17—187. In prize. U. S. dist. court. The United States vs. Steamer "Nuestra Senora de Regla." Appraisement of B. F. Delano & Benj. F. Garvin. Filed August 29, 1862.

40 United States district court, southern district of New York. In admiralty.

THE UNITED STATES
vs.
THE STEAMER NUESTRA SENORA DE REGLA, &c. } 17—187.

I, the undersigned, having been duly appointed and sworn as appraiser to appraise the value of the above-named steamer, her engine, &c., doth report that he has examined and appraised said steamer & engine, &c., and do find that said steamer, engine, &c., is worth the sum of thirty thousand dollars.

Dated New York, Oct. 18th, 1862.

All of which is respectfully submitted.

JOHN ENGLIS.

41 (Indorsed:) In prize. Vol. 17, page 187. United States district court, southern district of New York. In admiralty. The United States vs. The Steamer Nuestra Senora de Regla, &c. Appraiser's report, J. Englis. Filed Oct. 18, 1862.

42 United States district court, southern district of New York.

THE UNITED STATES
vs.
THE STEAMER "NEUSTRA SENORA DE REGla," her tackle, &c. } In prize.

I, George F. Betts, one of the commissioners of this court, to whom, by an order of this court made and entered on the 2nd day of June, 1870, in the above-entitled cause, it was referred to ascertain what damages and the amount thereof the claimants of the steamer "Neustra Senora de Regla," her engines, tackle, &c., have sustained by the seizure and detention of the said steamer, do certify that I have been attended by the counsel for the United States and for the claimants, and have taken and examined the testimony offered on behalf of the respective parties, and do find and report as follows:

That the steamer "Neustra Senora de Regla," above named, was seized by the officers of the United States as prize of war, on the
43 29th day of November, 1861; and thereafter, on the 16th day of December, 1861, was, by a charter, taken into the use of the United States, and so remained until about the 9th day of June, 1862, on which day she was libelled herein. That the said vessel remained in custody of the marshal*l* until*l* about the 22nd day of August, 1862, when the United States took possession of the vess'l and continued to use her until the 20th day of June, 1863, when a decree was made and entered restoring her to the owners, reserving the question of costs and damages, and thereafter the order of reference first referred to was entered.

I further find that the vessel was detained in the service of the United States, and in possession of the marshal*l*, from the 29th day of November, 1861, up to and including the 20th day of June, 1863, being five hundred and sixty-eight (568) days; and that the fair value for the use of the vessel during that time of which the claimants were deprived, is with interest at the rate of six*ty* per cent. per annum, to the 10th day of May, 1871—the date of this report—the sum of one hundred and sixty-seven thousand three hundred and seventy dollars and sixty-six ⅔d cents..... $167,370 66⅔

44 That the claimants are entitled to recover for the expenses and services of their agent in remaining with, and attendance to, said vessel, the sum of five thousand six hundred and eighty dollars..... $5,680 00

For counsel fee in defending said proceedings, the sum of five thousand dollars..... $5,000 00

For the value of the vessel when she should have been restored, at the rate of six per cent. per annum, with interest, the sum of thirty-six thousand eight hundred and thirty-three ⅓d cents..... 36,833 33⅓

$214,884 00

Making in all the sum of two hundred and fourteen thousand eight hundred and eighty-four dollars; which amount, under the order of reference, I am of opinion and report the claimants are entitled to have judgement for.

45 All of which is respectfully submitted.

Dated May 10th, 1871.

GEO. F. BETTS, *U. S. Commissioner.*

46 (Indorsed:) In prize. 17—187. U. S. district court, southern district of New York. The United States vs. The Steamer "Neustra Senora de Regla," her engines, tackle, &c. Com'r's report. Beebe, Dean & Donohue, for cl'm'ts. Filed May 19th, 1871. Ent'd order.

47 United States district court, southern district of New York.

THE UNITED STATES, &c.,
vs.
THE STEAMER "NUESTRA SENORA DEL REGLA," her tackle, &c. } In prize.

The libellant excepts to the commissioner's report made under the order of the court entered in this cause in June, 1870.

First. Because the said commissioner finds that the said steamer above-named was seized as prize of war by the officers of the United States on the 29th day of November, 1861.

Second. Because the said commissioner in this report allows damages for the detention in these proceedings of said steamer for a period prior to the libelling of said steamer, and while, as appears from the evidence herein, the said steamer was employed under a charter to the United States.

Third. Because the said commissioner in his safd report allows damages for the detention of said steamer at the rate of one hundred
48 dollars per diem, which the libellant claims to be excessive and far beyond the value of the services of said steamer to her owners.

Fourth. Because the said commissioner notwithstanding the fact that a decree of restitution was made herein and the said vessel ordered to be restored to her owners, and that there is no evidence to show that the said vessel was lost or destroyed during the time of her detention under the libel herein has allowed to the claimants, over and above the amount allowed as damages for such detention, the full value of said vessel as additional damages.

Fifth. Because the amount so allowed as last aforesaid for the value of said vessel is largely in excess of the amount of such value as proved by the evidence herein.

NOAH DAVIS,
U. S. Att'y, for Libellant.

49 (Indorsed:) U. S. district court. The United States vs. Steamer "Nuestra Senora del Regla," her tackle, &c. Libellant's exceptions. In prize. 17—187. 203. Noah Davis, U. S. att'y. Filed May 23d, 1871.

50 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and seventy-one.

Present, the Honorable Samuel Blatchford, district judge.

THE STEAMER "NUESTRA SENORA DEL REGLA," her tackle, &c.,
ad's
THE UNITED STATES OF AMERICA, LIBELLANTS & captors. } In prize. 17—187.

The report of George F. Betts, esquire, dated May 10th, 1871, the

commissioner to whom, by an order of this court made and entered on the 2nd day of June, 1870, in the above cause, it was referred to ascertain what damages, and the amount thereof, the claimants of the steamer "Nuestra Senora del Regla," her engines, tackle, &c., have sustained by the seizure and detention of the said steamer, having been filed on the 19th of May, 1871, by which it is reported that the steamer "Nuestra Senora del Regla" was seized by the officers of the United States as prize of war, on the 29th day of November, 1861; and, thereafter, on the 16th day of December, 1861, was by a charter taken into the use of the United States, and so remained until about the 9th day of June, 1862, on which day she was libelled herein. That the said vessel remained in custody of the marshal until about the 22d day of August, 1862, when the United States took possession of the vessel, and continued to use her until the 20th day of June, 1863, when a decree was made and entered restoring her to the owners, reserving the question of costs and damages, and thereafter the order of reference first re-
51 ferred to was entered, and that the vessel was detained in the service of the United States and in possession of the marshal from the 29th day of November, 1861, up to and including the 20th day of June, 1863, being five hundred and sixty-eight (568) days, and that the fair value for the use of the vessel during that time, of which the claimants were deprived, is, with interest at the rate of six per cent. per annum, to the 10th day of May, 1871, the date of said report, the sum of one hundred & sixty-seven thousand three hundred and seventy dollars and sixty-six ⅔ cents ($167,370 66⅔.) That the claimants are entitled to recover for the expenses and services of their agent in remaining with and attendance to said vessel, the sum of five thousand and six hundred and eighty dollars ($5,680 00.) For counsel fee in defending said proceedings the sum of five thousand dollars ($5,000 00.) For the value of the vessel when she should have been restored, with interest at the rate of six per cent. per annum, the sum of thirty-six thousand eight hundred & thirty-three dollars and thirty-three ⅓ cents, ($36,833 33⅓;) making in all the sum of two hundred and fourteen thousand eight hundred and eighty-four dollars ($214,884 00;) which amount, under the order of reference, the commissioner is of opinion, and reports the claimants are entitled to have judgment for.

52 And exceptions having been filed by the libellants to the said report, and Henry E. Davies, jun'r, esq're, appearing, & having been heard on the part of the United States, libellants, in support of said exceptions, and William M. Evarts and Charles Donohue, esq'res, appearing, & having been heard in opposition thereto—

It is now ordered, adjudged, and decreed that said exceptions be overruled, and said report be, & hereby is, in all things confirmed, and that final judgment be, and the same is hereby, rendered in the above cause in favor of the claimants of said vessel against the libellants and captors for

214,844 00 the sum of two hundred and fourteen thousand eight hundred and eighty-four dollars, being the amount so reported, together with interest thereon from the date of said report to the date of

6,086 54 this decree, being the sum of six thousand and eighty-six dollars and fifty-four cents, in the aggregate, amounting to two hundred

$220,970 54 and twenty thousand nine hundred and seventy $\frac{54}{100}$ dollars, on the ground that the said vessel was not lawful prize of war.

SAM'L BLATCHFORD.

(Endorsed:) In prize, 17—187. U. S. district court, south'n district of New York. The Steamer "Nuestra Senora del Regla," her tackle, &c.,

ads. The United States of America, libellants & captors. Final judgment ($220,970 54) for claimants. Beebe, Dean & Donohue, pr's cl'm'ts. Filed Oct. 28th, 1871.

53 U. S. district court, southern district of New York.

THE UNITED STATES
ag'st
THE STEAMER NUESTRA SENORA DEL REGLA, her tackle, &c.

Take notice that the United States, the above-named libellant, appeals to the Supreme Court of the United States from the decree made and entered in the above-entitled action on the 28th day of October, 1871.

Nov. 7th, 1871.

NOAH DAVIS, *U. S. Att'y.*

To GEO. F. BETTS, Esq.,
Clerk District Court.

To BEEBE, DONOHUE & COOKE,
Proctors for Def't.

54 (Indorsed:) U. S. dist. court, so. dist. of New York. In prize. 17—187. The United States vs. The Steamer Nuestra Senora del Regla, her tackle, &c. Notice of appeal. Noah Davis, U. S. att'y. To Geo. F. Betts, esq., clerk of dist. court. Filed November 7, '71.

55 Supreme Court of the United States.

THE UNITED STATES, APPELLANTS AND LIBELLANTS,
ag'st
THE STEAMER NUESTRA SENORA DEL REGLA, her tackle, &c.

To the Supreme Court of the United States:

The appeal of the above-named appellants respectfully shows: That, on or about the 9th day of June, 1862, the above-named libellants, The United States, exhibited their libel in the district court of the United States for the southern district of New York, against The Steamer Nuestra Senora del Regla, her tackle, &c., claiming the forfeiture of said vessel, as prize of war to the said United States.

That process having been issued out of the said district court, and the said vessel having been seized under such process, the said defendant filed an answer to the said libel, and that such proceedings were thereupon had, a decree of the said district court was made, whereby the said vessel was released, and it was referred to George F. Betts,

56 clerk of the said court, to ascertain and report the amount of damages sustained by the owners of the said vessel, by reason of her seizure as prize and detention, to wait the proceedings of the said court; and the said clerk did, on the 19th day May, 1871, file his report, wherein he reported that there was due to the owners of the said vessel, as damages as aforesaid sustained by them, the sum of $220,970 54 *dollars*; which report, on the 28th day of October, 1871, was confirmed by the said court, by the final decree thereof made and entered on that day.

And the said appellants are advised and insist that the said decree is erroneous, inasmuch as the said owners of the vessel are not entitled to

the amount awarded them by the said final decree, but that the said amount is largely in excess of the total value of the said vessel, and that the said clerk in making his said report allowed damages to the owners of the said vessel for amounts claimed by them to be due from the United States under an alleged or pretended charter-party, and that the said referee had before him no testimony whatever of the actual value
57 of the service of said vessel to her owners, in her usual and customary employment, and that the said referee allowed to the owners, among other things, the entire value of the said vessel, notwithstanding that, by the decree of the said court, she was released from custody upon the termination of the said prize proceedings, and ordered to be restored to her owners.

And the appellants for these and other reasons appeal from the whole of the said decree in favor of the said The Steamer Nuestra Senora del Regla, her tackle, &c., to the next Supreme Court, to be held in the city of Washington, and on the said appeal they intend only to have the said cause heard anew, on the same pleadings and the same proofs; and they pray that the said decree and every part thereof may be reversed with costs, or such other decree made thereupon as to the said Supreme Court seems just; and that the said steamer Nuestra Senora del Regla, her tackle, &c., may be condemned to pay to these appellants their costs and damages in the premises.

And they pray the record and proceedings may be returned to
58 the said Supreme Court, and the said decree may be reversed, or such other decree thereon be made as to the said Supreme Court shall seem just, and that the appellee may be condemned to the appellants their costs and damages in the premises.

NOAH DAVIS,
U. S. Att'y.

59 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Charles E. Marsac, being duly sworn, deposes and says that, on the 17th day of November, 1871, he served a copy of the annexed appeal Beebe, Donohue & Cook, by leaving the same with the person in charge of the office of said Beebe, Donohue, and Cook, at 78 Wall st.

CHARLES E. MARSAC.

Sworn before me this 17th day of November, 1871.

HENRY DONNE,
Notary Public, N. Y. Co.

(Indorsed:) U. S. Supreme Court. 17—187. The United States vs. The Steamer Nuestra Senora del Regla, her tackle, &c. Appeal. Noah Davis, U. S. att'y.

Service of a copy of the within appeal is hereby admitted.
Dated N. Y., November 15th, 1871.

Filed Nov. 15th, 1871.

60 By the Honorable N. H. Swayne, one of the justices of the Supreme Court of the United States:

Whereas the United States, libellants of the steamer Neustra Senora del Regla, her tackle, &c., have lately appealed to the Supreme Court of the United States from a decree lately rendered in the district court

of the United States for the southern district of New York, in the second circuit, made in favor of the said Steamer Neustra Senora del Regla, &c., and no security being required on an appeal by the United States in such proceeding, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the 21st day of March, 1872, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Washington the seventeenth day of February, 1872.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

To BEEBE, DEAN & DONOHUE, Esq's,
Proctors for the said Steamer Nuestra Senora del Regla.

61 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Charles E. Marsac, being duly sworn, deposes and says that, on the 21st day of February, 1872, he served a copy of the annexed citation on Beebe, Donohue & Cooke, by leaving the same with the person in charge of the office of said Beebe, Donohue & Cooke, at 68 Wall street.

CHARLES E. MARSAC.

Sworn before me this 24th day of February, 1872.

HENRY DONNE,
Notary Public N. Y. Co.

(Indorsed:) In prize. U. S. Supreme Court. The United States, libellants and appellants, ag'st The Steamer Nuestra Senor del Regla, her tackle, &c. Citation. Noah Davis, U. S. att'y, for appellants.

(Erased:) 17—187. Filed Feb'y 20th, 1872.

Improperly filed & withdrawn by U. S. dist. att'y.
Feb'y 24, 1872.

GEO. F. BETTS,
Clerk U. S. District Court, South'n Dist. N. Y.

(Indorsement on cover:) No. 627. The United States, appellants, vs. The Steam Ferry-boat "Nuestra Senora de Regla," her tackle, &c., The Compagnia del Ferro-Carrel de la Bahia de la Habana a Matanzas, claimant. S. New York C. C. U. S. Filed 7th March, 1872.

In prize. 17—187. U. S. Supreme Court. The United States of America, libellants & appellants. vs. The Steam Ferry-boat "Nuestra Senora de Regla," her engines, tackle, &c., The Compagnia del Ferro-Carrel de la Bahia de la Habana a Matansas, claimant & appellee. Apostles. Noah Davis, U. S. dist. att'y, for lib'ts & app'l'ts.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellants*,
vs.
THE STEAM FERRY-BOAT "NUESTRA SENORA DE REGLA," HER TACKLE, &C., THE COMPAGNIA DEL FERRO-CARREL DE LA BAHIA DE LA HABANA A MATANZAS, *Claimant*. } No. 627.

Appeal from the District Court of the United States for the southern district of New York.

ON THE MOTION TO DISMISS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellants*,
vs.
THE STEAM FERRY-BOAT "NUESTRA SENORA DE REGLA," HER TACKLE, &C., THE COMPAGNIA DEL FERRO-CARREL DE LA BAHIA DE LA HABANA A MATANZAS, *Claimant*. } No. 627.

Appeal from the District Court of the United States for the southern district of New York.

ON THE MOTION TO DISMISS.

BRIEF FOR THE UNITED STATES.

I. The first and second grounds assigned in the motion of counsel for appellee, as cause for dismissal, are contradicted by what clearly appears upon the face of the record. The decree appealed from is the final decree rendered October 28, 1871, in favor of the claimants, for $220,970 54, as damages sustained by them, (see printed Record, pp. 13, 14,) and the appeal was taken to the then next Supreme Court of the United States within thirty days of the rendering of that decree, the time required by the 13th section of the act of June 30, 1864. (13 Stats., 310.)

The mode of taking the appeal was, as it would seem, in accordance with the practice of the district court for the southern district of New York in taking appeals to the circuit court. A brief notice in writing to the clerk of the district court, and to the opposite proctors, that the United States appealed to the Supreme Court of the United States, was given on the 7th of November, 1871. (See printed Record, p. 15.) This was followed by a formal appeal in writing "to the next Supreme Court to be holden in the city of Washington," which was filed in the district court on the 15th November, 1871, and a copy thereof was served on the opposite proctors November 17, 1871. (Printed Record, pp. 15, 16.) Such is the practice of taking appeals, in admiralty and maritime cases, from the district court for the district aforesaid to the circuit court, (see Benedict's Admiralty, edition of 1870, sections 584 and 585;) and it is submitted that this practice, which in the present case was adopted in appealing from the same district court to the Supreme Court of the United States under the 13th section of the act of June 30, 1864, cited above, is sufficient and effectual for the purpose just mentioned.

So that, viewing the appeal here to have been taken at the time of the filing or service of the formal appeal as aforesaid, it is very manifest that it was taken within the period limited by law.

II. The third ground of dismissal assigned in the motion is unimportant. It has been shown that the appeal was to the then "next Supreme Court," &c., which it is submitted, was sufficiently definite and certain, without specifying the first day of the term. Where a cause is removed to this court by writ of error, it is necessary that some particular day of the term be designated as a return day for the writ, and the first day of the term has been fixed upon for that purpose. But in an appeal, which is effected without the issue or return of process, the naming of a day does not seem material, so that the term of the court appealed to be described with sufficient certainty. The rules of this court concerning the docketing of cases, determine the period within which the appellant must file the record and docket the cause.

III. The fourth and last ground of dismissal assigned is equally unimportant. The object of the citation is notice, and where the parties have had notice, in fact, that an appeal has been taken, the citation is unnecessary. (Phillip's Practice, 86.) The record shows that notice was given the parties, in this case, *at the time of taking the appeal.* The practice of the court below required, in order to perfect the appeal, the service of a copy of the formal appeal upon the opposite party, which was done on the 17th of November, 1871. (Printed Record, p. 16.) This constituted notice, and fully answered the purpose of a citation. However, a citation was issued on the 17th of February, 1872, citing

the parties to appear on the 21st of March following, (printed Record, pp. 16, 17;) though, under the circumstances of this case, there was plainly no necessity for the issue of any; and consequently it is immaterial whether or not that was a sufficient citation.

C. H. HILL,
Assistant Attorney General.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

THE UNITED STATES, *Appellants*,
vs.
THE STEAM FERRY-BOAT NUESTRA SENORA DE REGLA, HER TACKLE, &C. } No. 360.

Appeal from the District Court of the United States for the Southern District of New York.

BRIEF FOR THE UNITED STATES AND CAPTORS.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

THE UNITED STATES, *Appellants*,
vs.
THE STEAM FERRY-BOAT NUESTRA SENORA DE REGLA, HER TACKLE, &C.
No. 360.

Appeal from the District Court of the United States for the Southern District of New York.

BRIEF FOR THE UNITED STATES AND CAPTORS.

STATEMENT.

The steamer Nuestra Senora was seized by the officers of the United States Army, as prize of war, on the 29th of November, 1861, at or near the port of Port Royal, South Carolina. On the 16th of December, 1861, while still in the possession of the Government, she was chartered to the Government under a charter-party, between the captain, acting in behalf of the owners of the vessel, and Captain Saxton, assistant quartermaster, by which the owners of the vessel were to receive the sum of $200 for each and every day the said vessel should remain in the service; the agreement to be void in case she should be confiscated to the United States. Either party could put an end to the agreement after the end of ten days.

The steamer remained in service under this charter-party until about the 9th of June, 1862, when she was libelled as prize of war.

On the 22d of August, 1862, the vessel was appraised by order of the court as worth the sum of $28,000, and was thereupon delivered to the Navy Department for the use of the Government, subject to the order and disposal of the court on final decree.

On the 20th of June, 1863, a decree of restitution was ordered by the court, the question of costs and damages resulting from the capture being reserved for future determination. But the vessel was never restored to the owners. (Record, p. 7.)

On the 2d of June, 1870, the case was referred to a commissioner to ascertain and report what damages, and the amount thereof, the claimants have sustained by the seizure and detention of the steamer.

On the 10th of May, 1871, the commissioner made his report, in which he awarded, as a fair value, for the use of the vessel from November 29, 1861, up to and including June 20, 1863, being 568 days, with interest at the rate of six per cent. per annum to the date of his report $167,370 66⅔

For expenses and services of claimant's agent in remaining with and attending to said vessel 5,680 00

For counsel fees in defending the proceedings 5,000 00

For the value of the vessel when she shall have been restored, at the rate six per cent., with interest 36,833 33⅓

Total 214,884 00

The Government filed the following exceptions to the commissioner's report in June, 1870:

First. Because the said commissioner finds that the said steamer above named was seized as prize of war by the officers of the United States on the 29th day of November, 1861.

Second. Because the said commissioner in this report allows damages for the detention in these proceedings of the steamer for a period prior to the libelling of said steamer, and while, as appears from the evidence herein, the said steamer was employed under a charter to the United States.

Third. Because the said commissioner in his said report allows damages for the detention of said steamer, at the rate of one hundred dollars per diem, which the libellant claims to be excessive and far beyond the value of the services of said steamer to her owners.

Fourth. Because the said commissioner, notwithstanding the fact that a decree of restitution was made herein and the said vessel ordered to be restored to her owners, and that there is no evidence to show that the said vessel was lost or destroyed during the time of her detention under the libel herein, has allowed to the claimants, over and above the amount allowed as damages for such detention, the full value of said vessel, as additional damages.

Fifth. Because the amount so allowed as last aforesaid, for the value of said vessel, is largely in excess of the amount of such value as proved by the evidence herein.

On the 28th of October, 1871, the exceptions were

overruled and the report confirmed, and final judgment rendered against the libellants and captors for said sum together with interest thereon from the date of the report to the date of this decree, being the sum of $6,086 84, amounting, in all, to $220,970 54.

On the 7th of November, 1871, an appeal was taken to the Supreme Court, and a notice of the appeal served by copy on the proctor for the claimants, on the 17th of the same month. On the 17th of February, 1872, the appeal was allowed by Mr. Justice Swayne, of the Supreme Court, at Washington, and the claimants cited to appear before said court on the 31st of March, 1872.

ASSIGNMENT OF ERRORS.

First. As the steamer was in the service of the United States under a charter party from about the time of her seizure until the time that she was libelled as prize of war, no judgment for compensation for her use during that time can be rendered against the Government in this proceeding.

Second. The vessel, never having been restored to the owners, must be considered as a total loss at the time of her capture, and the damages must be assessed on that basis.

Third. No judgment ought to be rendered for demurrage on the restitution of a vessel seized as prize of war, without misconduct on part of the captors, or wilful negligence and delay in bringing the case before a prize court for adjudication.

Fourth. If demurrage is allowable at all, the amount allowed in this case, upon its face, is excessive and exorbitant.

ARGUMENT.

Upon the question of jurisdiction, counsel desire to add nothing to the brief filed at last term.

I.

Although by the prize act of 1864, § 14, (13 Stats. at Large, 311,) "any costs or charges allowed by the court and not paid by the claimants," in a case of restitution, "shall be a charge upon and be paid out of the fund for defraying the expenses of suits in which the United States is a party or interested," this case must be treated, in arguing the question of damages, as one in which the captors only (as in prize cases generally) are liable for damages and costs; for without a statute, no judgment for costs and damages can be rendered against the Government in prize causes, more than in any other case.

The Leda, Brown. & Lush., 19.

Case *vs.* Terrell, 11 Wallace, 199, 201, and cases cited.

And no damages can be assessed in this suit except those for which the captors themselves are primarily liable.

In the present case, it appears that, almost immediately after the capture of the steamer, she was chartered to the United States, and continued in the service of the Government, under the charter-party, until about the time she was libelled in the district court. For her detention during this period, therefore, the Government, if anybody, is liable—not in prize, but by suit in the Court of Claims, on the charter-party. The captors have nothing to do with it.

The delay in bringing the steamboat before a prize court seems to have been caused by her employment under this charter-party, and does not appear to have been occasioned by any negligence or delay on the part of the captors.

II.

The decree of the district court was that the steamer should be restored to the claimants. What became of her, and why she was not restored, does not appear. But, from the deposition of Lentilhon, (Record, p. 7,) it appears that the owners never received her back, and that she had never been offered to them; and this statement is confirmed by the report of the Commissioner, allowing her value at the time when she ought to have been restored, with six per cent. interest.

Where, in consequence of a marine tort, property is lost to the owners, the measure of damages is the prime cost or value of the property lost at the time of the loss, with interest.

Del Col *vs.* Arnold, 3 Dall., 333.
The Anna Maria, 2 Wheat., 327.
The Amiable Nancy, 3 Wheat., 546, 560.
La Amistad De Rues, 5 Wheat., 385.
The Ann Caroline, 2 Wallace, 538.
The Lively, 1 Gallis., 315.
The Columbus, 3 W. Rob., 159, S. C., 6 Notes of Cases, 671.
The Empress Eugenie, Lush. Adm., 138.
The Clyde, Swabey, 23.
Sedgwick on Damages, 469, note and cases cited.

And the owner is not entitled to demurrage.

"The Newbern" Swabey's admralty Rep. - 335

In the present case the vessel has been, so far as the owners are concerned, totally lost. She has never been restored to them, and consequently the case falls within the principle of the above cases, where the result of the tort is the total loss of the ship. It is immaterial whether the ship is destroyed or is subsequently sold, as in the case of the Anna Maria, *ubi supra*. If there is no restitution *in specie*, the rule applies.

Thus, in the leading case of the Levin Lank, Swabey, 45, S. C. *nom.*, Harrison *vs.* The Queen, 10 Moore, P. C., 212, *et seq.*, a vessel was seized under the statutes for the suppression of the slave trade and sold by order of the court. The Privy Council, on making decree of restitution, allowed her value, with costs and incidental damages, and disallowed claims for damages for the breaking up of the voyage, &c., cutting down the claimant's damages from £20,408 0*s.* 5*d.* to £1,593 9*s.* 10*d.*

See, also, The Two Susannahs, 2 C. Rob. 132.

In trover, the measure of damages is the value of the property at the time of the conversion, with interest and cost, and the subsequent return of the property does not defeat the action, but only mitigates the damages.

Vandrink *vs.* Archer, 1 Leon., 221, 223.
Murray *vs.* Burling, 10 Johns., 172.
Lucas *vs.* Trumbull, 15 Gray, 306.
Clark *vs.* Wilson, 103 Mass., 222, 223.

In the present case, the delivery to the Navy Department after appraisement must be treated like a sale by order of court, and the cases of the Anna Maria and the Levin Lank directly apply.

III.

The next question arises on the allowance made of $200 a day as demurrage from the time of the capture of the Nuestra Senora until the decree of restitution, a period of nearly two years.

Where a vessel is seized either as prize or under the revenue laws without probable cause, it is now undoubtedly settled that the owner is entitled to restitution with costs and damages as for a marine tort.

Talbot *v.* Janson, 3 Dall., 133.

The Charming Betsey, 2 Cranch, 64.

Relied on by Donahue

The Apollon, 9 Wheat., 362.

The Actæon, 1 Dod., 51.

The Ostsee, 9 Moore, P. C., 150; S. C., 2 Spinks, 170.

But the cases are utterly irreconcilable if the rule in regard to collisions applies universally to all captures and seizures without probable cause.

"The natural rule," says Lord Stowell, "is, that if a party be unjustly deprived of his property, he ought to be put as nearly as possible in the same state as he was before the deprivation took place; technically speaking, he is entitled to restitution, with costs and damages. This is the general rule upon the subject, but, like all other general rules, it must be subject to modification."

The Actæon, 2 Dod., 51.

Mr. Justice Story says "in cases of marine torts, independently of prize, Courts of Admiralty are in the habit of giving or withholding damages upon enlarged principles of justice and equity, and have not circum-

scribed themselves within the positive boundaries of mere municipal law. They have exercised a conscientious discretion upon the subject."

The Marianna Flora, 11 Wheat., 54.

See also Le Louis, 2 Dod., 210.

And Dr. Lushington considers that a distinction should be made between a seizure by a commissioned officer and one made by a mere volunteer.

The Elise, 2 Spinks, 37.

The restitution of a vessel captured as prize may be ordered under the following circumstances:

First. Where there was probable cause of capture; in which case the claimant is not entitled to costs or damages.

Second. Where there was no probable cause of capture, but where the conduct of the captors was honest and unexceptionable; in which case the captors will be required to pay costs and direct damages, but it is questionable whether demurrage or damages in that nature will be decreed against them.

Third. Where there was not only no probable cause for capture, but where the conduct of the captors has been grossly culpable or grossly negligent.

And it is submitted, that it is only in the latter case that damages in the nature of demurrage ought to be allowed.

Lord Stowell never allowed demurrage except as punishment for wanton negligence, or unjustifiable de-

tention and delay on the part of the captors in bringing the case before a prize court.

The Corier Maritimo, 1 C. Rob., 287.

The Madonna del Burso, 3 C. Rob., 169, 174, 175.

The Zee Star, *Ibid.*, 71.

The St. Juan Baptista, 5 C. Rob., 33.

The John, 2 Hagg. Adm., 305.

Mr. Justice Story says: "If the capture is made without probable cause, the captors are liable for damages, costs, and expenses to the claimants. And *if the captors unjustifiably neglect to proceed to adjudication*, the court will, in case of restitution, decree demurrage against them.

2 Wheat., Appendix, 11.

In many cases, costs and damages in prize seem to be treated as in part punitive, upon the captors.

The Speculation, 2 C. Rob., 293.

The Washington, 6 C. Rob., 275.

The Leucade, 2 Spinks, 228.

The Two Susannahs, 2 C. Rob., 132.

In Talbot *vs.* Janson, 3 Dall., 133, damages in the nature of demurrage were allowed; but Mr. Justice Story, in the case of the Lively, 1 Gallis., 321, says, of that case, that it was "one of gross illegality and in which the courts were disposed to animadvert with considerable severity." This would bring it within the rule contended for.

In the Apollon, 9 Wheat., 362, which was a libel for damages against a collector of customs for an illegal seizure of a ship and cargo for an alleged violation of the reve-

nue laws, demurrage was allowed; but the question of whether there ought to have been demurrage, or not, allowed as part of the damages in the case, does not seem to have been argued, but only the question as to what the amount allowed should be.

The early cases all rejected anything in the nature of consequential damages in the case of a marine tort.

The Amiable Nancy, 3 Wheat., 546.
La Amistad De Rues, 5 Wheat., 385.
The Lively, 1 Gallis., 312.
Smith *vs.* Condry, 1 How., 28.
Sedgwick on Damages, 69, 70.

See also—

Boyd *vs.* Brown, 17 Pick., 543.
Blanchard *vs.* Ely, 21 Wend., 342.
Brown *vs.* Smith, 12 Cush., 366.
Fleming *vs.* Beck, 48 Penn., 349.

In collision cases, the modern rule allows damages, in the nature of demurrage, for the detention of the vessel while undergoing repairs and for freight, where there is not a total loss.

Williamson *vs.* Barrett, 13 How., 101.
The Gazelle, 3 W. Rob., 279; S. C., 3 Notes of Cases, 75.
Heard *vs.* Holman, 19 C. B. N. S., 1.
1 Parsons on Ship. & Adm., 540, note and cases cited.

But this rule has, as yet, been confined to cases of collision.

It is difficult to see why, in cases of capture, there is any good ground for drawing a distinction between a

case of a vessel totally lost, (when the prime value of the vessel and cargo with interest and costs is the proper measure of damages, as in the cases of the Anna Maria and the Levin Lank,) and the case of a vessel detained and subsequently restored to the claimants, so far as concerns the allowance of demurrage, or any damages of that nature. Where a voyage is entirely broken up by the unjust seizure of a vessel, resulting in a total loss to the owners, the hardship is just as great as in the case where it is broken up by the detention of a vessel afterwards restored by decree of court.

However well the rule may be established as to cases of collision, public policy forbids such a distinction being established in cases of capture or seizure by an officer of the Government.

See The Leucade, 2 Spinks, 228.

IV.

But, assuming that demurrage should be allowed in this case, the amount allowed is so exorbitant that this court will not permit it to stand.

The value of the Nuestra Senora at the time she was appraised and delivered to the Navy Department, was less than $30,000. That a vessel of that value could obtain regular employment which would give her owners $200 a day profit, continuously, for two years, is an idea too preposterous to be tolerated for a moment.

It may be that, under the peculiar military exigency, when the Government was chartering vessels at most extravagant rates, and being defrauded on every side by ship-owners, who took advantage of its dire neces-

sity, a charter-party, at this rate, could be obtained for a short time, as is shown by the charter-party executed by the master of this vessel and Captain Saxton. But such an exceptional and abnormal exigency is not the fair value of a ship, nor is it the proper test by which to measure damages in cases of this kind.

In the cases where demurrage has been allowed, it has been only for very short periods, or else the amount *per diem* has been very small.

In the case of the Apollon, *ubi supra*, $40 a day for one hundred and seventy-five days, or $7,000, was allowed for a ship seized under the revenue laws. The value of the ship does not appear, and under the circumstances this court declined to say that the amount was exorbitant.

But the allowance of $170,000, for less than two years' detention of a steamer of the value of $30,000, is a *reductio ad absurdum* that establishes the fallacy of the principle upon which the assessment was made.

Twenty dollars a day, or one-tenth of what the court below allowed, would be ample compensation for a steamer like this. Correcting the assessment on this basis and the amount allowed would be—

Demurrage and interest at 6 per cent	$16,737 06⅔
Expenses of agent	5,680 00
Counsel fee (and a very liberal one)	5,000 00
Value of vessel and interest	36,833 33⅓
Total	64,250 40

Thus the owners would receive back more than double the value of their boat.

G. H. WILLIAMS,
Attorney General.
C. H. HILL,
Assistant Attorney General.

U. S. Supreme Court.

The Steamer "NUESTRA," &c., *Appellee.*

ade.

UNITED STATES, *Appellant.*

Points for Appellee.

In this case the appeal is from the District Court of the United States for the Southern District of New-York in prize. The decree in the cause there was assessing damages for the detention and seizure of the vessel, and the final decree was entered on the 28th of October, 1871. This was more than than 30 days before the first day of the term of this Court, which commenced on the first Monday of December, 1871. By law the appeal on prize is to be direct to this Court, and must be made within 30 days. See Act, 30 June, 1863, § 13, 13 Stat. at L., p. 310.

The United States served a petition of appeal and notice within 30 days, but no appeal was allowed or asked for, nor is there any proof of its being asked for or allowed within 30 days.

In February, and more than 90 days after the decree was entered, a citation was for the first time applied for and taken out by the United States. The citation was not to appear on the first day of the term, but to the 21st day of March, 1872.

The appellee appears for the purpose of moving to dismiss alone, making his appearance special for that purpose. We claim that the appeal should be dismissed:

FIRST.—The appeal was not made within 30 days as the Act required, Sec. 13, Act of 30 June, 1864. The mere service of notice and petition of appeal out of Court without allowance is not making an appeal, where, as in this case the decree was in the Court below as herebefore the commencement of the term and the time to appeal would expire before the term, the citation is a part of the appeal and should be served before the thirty days were up. See Phillips' Practice, U. S. Supreme Court, 51, and cases cited. 8 Rule SC sub 4 Brockett Ad § 601, 604

SECOND.—The obtaining of the citation and the form of it, and its return day are all wrong, and the appeal is in this irregular and the cause is not before the Court. Phillips, 51.

THIRD.—An appeal as in this case to this Court, for the 21st March, is nowhere permissible in law, the appeal is erroneous and should be dismissed.

The effect of this appeal, taken as it was, was in effect to throw the case over another term, and should not be favored.

CHARLES DONOHUE,
For Motion.

6, Howard. p 81

K. Tompkins, Printer, 16 Cedar Street, New York.

Supreme Court, U. S.

THE STEAMER NEUSTRA, SIGNORA DE REGLA
Appellee,
ads.
THE UNITED STATES,
Appellants.

Brief and Points for Appellant on motion to dismiss and on merits.

CASE.

In 1860 the claimants and appellees, who are a railroad company in Cuba, and who in 1860 were finishing their road from the Bay of Havana to Matanzas, contracted for the building of the above boat in New York. The boat was built and finished in New York prior to October, 1861, and started from New York under command of a Spaniard, Ignatio B. Reynolds, for Havana, as a Spanish vessel, she met with the disasters set out in the papers (see fol. 12, 13, 14 of record) and finally got to Port Royal by the license of the Admiral in command, taking for the Admiral certain prisoners (fol. 14). After the arrival of the vessel the United States wanted to buy the vessel, but the master having no authority to sell refused, and she was then seized and up to the end of the war remained with but little exception in the actual service of the United States, who employed her and made good use of her during the war (see admission in order if Court record, fol. 20, 21).

No prize proceedings were instituted until June 9th, 1862, and the claim and test oath as soon as as the vessel was proceeded against were put in.

Prior to the filing of the bill a charter had been at the request of the United States entered into, which is the case (fol. 32, 3–4).

The case having been delayed without the fault of the claimants (the United States in the meanwhile using the vessel) a decree of restitution was entered on the 20th of June, 1863 (see fols. 17, 18). This decrees *the actual restoration of the vessel*, and to this the United States made no exception or objection.

As the United States had in fact used the boat under the charter as matter of courtesy to the War and Navy Department, the Court, to allow the government to adjust the claim on the 15th of October, 1863, made an order staying further proceedings until an opportunity for such adjustment was had to this admission of the use of the boat, and liability for it, in addition to the return, the United States not only did not dissent, but as the record shows, assented (see fols. 20, 21). After fruitless attempts it was found that no power existed in the departments to make any adjustment, and that it must be done in the prize court.

The Court on the consent of the District Attorney, on motion of Hon. William N. Evarts, directed the damages for the seizure and detention of the vessel to be ascertained (see fol. 24). The proof before the Commissioner to which no exception was taken proved that the boat was not returned (fols. 20, 21, 27). The charter made by the United States themselves, and providing for its continuance and as to which no notice of cancelment was ever given was put in to show what such a boat was worth at the time of detention.

The expense of attending to the proceedings of restoration and counsel was proved and no exception was taken to either of them.

No evidence whatever was put in the United States of the value of the boat for charter, the charter they had made not being objected to

The Commissioner reporterted for the detention of the vessel up to the decree of restoration $167,000 including 8 years interest and over value of the vessel with interest $36,833.33.

To this report the United States filed substantially the following objections:

1. That the Commissioner found that the vessel was seized as a prize, Nov. 29, 1861.

2. That he allowed for detention prior to the filing of the libel.

3. That he allowed an excessive rate for detention.

5. That he allowed for value of the vessel when there was a decree of restitution.

5. That the value of the vessel proved was excessive.

On argument the exceptions were overruled and a decree entered for the claimants, on the 28th day of October, 1871.

On the 17th day of November, 1871, a notice and petition of appeal was served on the proctors for the vessel. No date in any term or time in any term to which it was made it is claimed to be in it. No citation or other paper further was served until that at fol. 60, which was served on the 21st February, and was for the 21st March, 1872.

The case comes before the Court.

First on a motion to dismiss allowed to be made by the order of the Court.

We ask that the appeal should be dismissed. The appeal was not prayed or asked in open court. No

allowance of the appeal appears. The term of the court at which the decree passed had ended. The petition of appeal did not pray an appeal to the first day of the next term. The petition of appeal was not accompanied by a citation. No citation was issued until long after the time to appeal had elapsed, and then it was not to the first day of the next term, but to the 21st of March, a day unknown to any rule as a return day. The decree was made more than 30 days before the commencement of the term. As to when the term ended see Benedict, 318, as to the time within which the appeal must be taken.—See Act June 30, 1864, 13 Stat. at L. 310.

As to the irregularities being fatal, see Phil. Pr. 42, 51, 83, 85. 9 Wall, 787. 6 How, 81.

Second, if not dismissed on the merits.

9th Mullan

FIRST.

The case it is observed comes up not only without objections, but with actual consent, if not acquiescance in all the proceedings before, except those stated in the exceptions to the commissioner's report. The right to restitution, the right to compensation for the detention, see decrees already referred to, was not denied below.

SECOND.

This claim is made by foreign subjects whose vessel in time of war, and for great national purposes the United States took possession of, and not only held, but used to good purposes. It was not a mere wrongful possession of the boat for which the claim

is made, (as is ordinarily the case in prizes), but for the actual *bona fide* use of our property for a purpose of great merit if not necessity. In addition, the parties owing no allegiance to the United States from whom the boat was thus taken, submitted with fairness, trusting that in the United States they had a debtor who would recognize their rights.

For nearly two years these parties patiently awaited proceedings in prize before they could ascertain whether they should have their boat or not. It was a case where a foreigner would have been excused for demanding a more speedy appeal to the State Department. They submitted to the will of the United States, and it is but fair on their part to expect that the United States, having injured them and had the use of their property, should restore it and pay for its detention; they ask nothing more than justice. Charters quite as favorable as to the final amount paid were made with our own citizens, and there is no reason that these parties should be treated any worse.

With regard to our own citizens, the United States attempted to set up the doctrine that where the charter paid for the boat they became owners, but did not succeed in the point.

THIRD.

Had the detention of the vessel been merely a detention and not used at all by the United States, the restitution and the value of the detention would have been reasonable, and the charter value of the vessel in which she was engaged or might have chartered for, is the true rule; now what she was worth to charter is shown by the charter actually made by the United States on their own. motion

Such was the rule adopted in

The Labnan.
The Glen, Blach. Prize R, 375.
The Sybil, Blach. Prize, 615.

And Congress in passing the bills to pay the claims approved the rule in the acts cited.

See Acts, July, 1870, Chap. 220; July 8, 1870, Chap. 231.

In regard to vessels chartered voluntarily by our citizens, the Act of 9 Stat. at Law, 415, 12 Stat. at Law, 743, would seem to provide that the vessel should be returned or her value paid, besides any amount of charter money. Here, where the party was deprived of their vessel and the United States used her, he should at least be equally well paid.

FIFTH.

In the first instance, a vessel proceeded against as prize must determine her rights in that court, and that court is clothed not only with the decision of the question of prize or no prize, but the decision of the question of costs and damages, and had the District Court here decreed any less redress to the claimants, it would not have barred the claimant's right as a foreigner to demand entire redress for his wrong; the amount of the claim is no answer to it; the United States and her courts have no right to hold vessels by itself or its courts during its pleasure, and then, on the pretence that the claim is large, deny redress. They had the power in their own hands; they were using our boat, and could at any time have given it up.

2 Goll., 19 St. Lawrence.
1 Bay, 470.

SIXTH.

The question arrises, is there any ground for either of the exceptions taken.

The first exception taken is that the Commissioner found that the vessel was seized as a prize Nov. 29, 1861. The evidence on that point is fol. 30, the evidence in preparatorio for the United States.

2. That he allowed for detention prior to filing the libel. The point of this exception we cannot discover; if we are allowed for detention, it is clear for what time the detention lasted and to deny as detention for time prior to the filing of the libel, when the United States used the boat, can hardly be fair.

3. That the allowance was excessive. The fact that the United States took her on a charter of their own making at the rate stated, is the best evidence on the point.

If there was a moral doubt that it was not so, why did the United States fail to put in proof on the point. They were too glad to take it as it was.

If the rule is to be what the vessel could earn in her *usual* employment, then a vessel going to be sold, a vessel going to be used on an employment in which she has not reached, could never be proved. Williamson *vs.* Barrett. 13 Howard, 111, is the true rule of detention, that is if she is under charter, what she would earn on that charter, if not what she could be chartered for; apply either rule and what becomes of the exception. In the case of the Cayuga, a ferry Company with a spare boat is allowed to recover for the use of that spare boat, to supply the place of one injured.

The fourth exception can hardly be understood by us. The decree did indeed order restored

what we were for two years nearly trying to get restored, but it was not restored (see fol) If it was not then, its value is to be given. The decree is *restoration* and detention.

5. That the value allowed is excessive. The Commissioner took $\frac{5}{6}$ of her value in August, 1862, as we valued in August, 1863. Did any one ever hear of such a depreciation as that of 16 per cent. in one year, and yet they claim this excessive?

It is the duty of a party who intends to impeach a report, or the evidence on which it is to come up, to point out to the Commissioner by proper exceptions to evidence and proper exceptions to the report what he objects to, so that if it can be supplied the party may have the opportunity to do it, and what is not excepted will not be looked into.

See2 Black, 281 Potomac, C. in Chief, 1 Wall, 43.

It is submitted that the United States had on all the points in controversy the fullest means of proving the facts on these points if they differed from us. They had the boat. If she was not worth the amount we asked why did the United States not prove it? If she could be chartered for any less why did they not prove it? Not only was the keeping of the vessel their own act for their own use, but the delivery or non delivery was with them.

Had the rule of damage been what the claimants really lost the damage would have been at least double the business of the railroad was, in fact, nearly ruined by the want of the boat, the actual cost to them of doing the work she could have done was enormous. But these things could not be proved; the only rule was what she could

charter for, and to that we were bound, and no exception to that rule was taken before the Commissioner.

SEVENTH.

The case presents not the ordinary one of a claim for mere detention on the part of a foreigner of his property, where the loss of the use is an unfortunate one to fall on him or the United States, but a case in which the loss is the entire loss of the owner of the property, and the loss to him is the entire benefit and use of the United States. His loss has been the actual gain of the United States. Suppose this had been a case where the United States had taken and used clothing or provisions or stores, how could they be called on to pay for them at the price at the place of seizure, or the price at some place a thousand miles off. Is it fair, is it just, that the rule should be a flexible one for the United States? That is, that when it suits them one thing shall be the rule, and at another time another. No, they must take the same rule that others do, and that is what the use of the article was at the time and place they took it, and that is what we ask. If they desired to moderate the price, they had the matter in their own hands.

And it is submitted that, while the necessity of the United States required submission on our part to their capture, justice requires on their part liberal conduct to us. Here is a Company who in a moment of peril to the United States lost the use of their vessel to ~~and~~ reduce that peril; they have waited patiently for over eleven years for redress, and it is not too much to ask that they should have it.

EIGHTH.

Four principles seem to be relied on by the U. S. to reverse this decree.

I. That the decree cannot be against the United States. This point was not taken below. The assessment was on the exact opposite of the principle agreed to. See orders and decrees.

See 10 Wall, 15.
" 7 " 219.

II. That the prize court cannot assess the amount due on the charter; no one has asked them to do so. The vessel has been detained for the time we ask for compensation, and we merely put the charter in to show what such vessels could charter for.

III. That the United States, having refused to to deliver at the end of their detention, need only pay the value of the vessel, to illustrate, is to condemn the principle.

If this is true, a man who leases a house or boat, a horse or farm, when the rent amounts to as much as the place is worth, refuse to deliver, and then pay what the place, boat or horse is worth, and own it from that out, such anti-rent notions would change ownership too easily.

IV. The point that the vessel was taken under orders of the Court by the Navy Department is incorrect. She was only to be so taken when the certificate that the money for her appraisal was deposited. This never was done, and the department never did take under the order of Court. Had they done so, we should have been relieved of further efforts to retake.

But the answer is still more pertinent that the decree not appealed from directs restoration.

We submit that the decree is a fair one, and should be affirmed.

C. Donohue
for

Wm. McDonald
Counsel